Supreme Court, U.S.
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No. 96-1534

In The

Supreme Court of the United States

October Term, 1996

KEVIN SWEENEY,

Petitioner,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Maryland

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Was the Petitioner denied due process in a suit brought in State court by a local governmental to collect taxes when his challenges to the propriety of the assessment and levy were denied by the trial court, because the Petitioner had failed to avail himself of the statutory procedures provided for challenging a tax decision?

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BRIEF IN OPPOSITION

The Mayor and City Council of Baltimore ("the City"), Respondent, urges that the Petition for Writ of Certiorari to review the judgment of the Court of Appeals of Maryland (denying a writ of certiorari seeking review of a trial court appellate decision) be denied for the reasons set forth below.

STATEMENT OF THE CASE

This case arose when the City filed suit in the District Court of Maryland, a trial court of limited jurisdiction, to collect unpaid personal property tax which had been certified by the State of Maryland's Department of Assessments and Taxation as being owed. In the District Court, the Petitioner sought for the first time to challenge the assessment and levy. His arguments did not prevail because, as the trial judge recognized, the Petitioner had failed to challenge the State's tax assessment and levy in the manner prescribed by State law, which provides a multi-tiered appeal process including judicial review. The trial court entered judgment against the Petitioner for the taxes owed.

After disposition of his post-judgment motions, the Petitioner appealed to the Circuit Court for Baltimore City, a trial court of general jurisdiction, which hears appeals from the District Court. After reviewing the record, the Circuit Court affirmed the decision below. The Circuit court denied a motion to alter or amend the judgment and also found that the Petitioner's six motions to dismiss, filed over two months after the judgments and

one month after the denial of the motion to alter or amend, were moot.

The Petitioner then sought further review from the Court of Appeals of Maryland, which denied his petition for writ of certiorari and his subsequent motion to reconsider. There followed the present petition addressed to this Court.

SUMMARY OF ARGUMENT

This Court should deny the petition for writ of certiorari, because further review is neither desirable nor in the public interest. The judgments below were unreported and have no precedential effect. The case does not involve any important question of federal law which needs to be addressed by this Court.

The Petitioner argues that he was denied due process below, but in fact, the State of Maryland has provided a comprehensive process for the challenging and appealing of tax decisions. The Petitioner simply failed to avail himself of this process. Thus, the case was decided properly below and it does not involve any issue which merits consideration by this Court.

REASONS FOR DENYING THE WRIT

The Court should deny the petition for writ of certiorari, because further review is neither desirable nor in the public interest. The judgments below were announced in unreported opinions, which will have no precedential

effect on any other case. The Court of Appeals of Maryland did not consider it worthy of further review. Moreover, the courts below did not decide any important federal question of first impression which has not been settled by this Court or which conflicts with this Court's decisions. This case fails to meet any of the criteria for discretionary review by this Court, as set forth in Rule 10.

There is really no unsettled issue of federal law involved in this case. The Petitioner's main contention seems to be that he was not successful in presenting his defenses and challenges to the levying of the tax in the court action to collect the tax. This argument fails to acknowledge that the State of Maryland has provided a detailed and comprehensive scheme for the challenging of tax decisions made by the government.

Annotated Code of Maryland, Tax-Property Article (hereafter "T-P Art."), §6-101(a) states that " . . . all property located in this State is subject to assessment and property tax and is taxable to the owner of the property." T-P Art., §6-201 provides that the State may impose State property tax on the assessment of property; similarly, under T-P Art., §6-202, the City and counties may impose property taxes on the assessment of property.

T-P Art., §11-101(a) states:

> On or before April 15 of each year, a person shall submit a report on personal property to the Department [of Assessments and Taxation] if:
>
> * * *

(3) the person:

(i) does business in the State or in the preceding taxable year did business in the State; and

(ii) owns or during the preceding taxable year owned property that was assessed for property tax purposes.

The Petitioner began his resistance to being taxed by failing to make his report and questioning the Department as to their authority to require reports and to assess property.

Maryland statutes provide a comprehensive method for challenging an assessment made by the Department. T-P Art., §14-504 states:

(a) *In general.* – For personal property assessed by the Department, any taxpayer, a county, a municipal corporation, or the Attorney General may submit a written appeal to the Department as to a value or classification in a notice of assessment on or before 45 days from the date of the notice.

(b) *Hearing required.* – If the requirements of subsection (a) of this section are met, the Department shall hold a hearing as provided under §14-510 of this subtitle.

T-P Art., §14-512(a) provides administrative review of property tax decisions by the Department as follows:

(a) *From property tax determinations by the Department.* – Any taxpayer, the governing body of a county, a municipal corporation, or the Attorney General may appeal a final action by the Department on an appeal under §14-504 or

> §14-505 of this subtitle to the Maryland Tax Court. The appeal shall be made on or before 30 days from:
>
> (1) the date of the final action of the Department; or
>
> (2) the earlier of the date of delivery or mailing of the notice of the final action to the address specified under §14-507 of this subtitle, if a request is made under §14-507 of this subtitle.

The Maryland Tax Court is an administrative body which has the following jurisdiction:

> (a) *In general.* – The Tax Court has jurisdiction to hear appeals from the final decision, final determination, or final order of a property tax assessment appeal board or any other unit of the State government or of a political subdivision of the State that is authorized to make the final decision or determination or issue the final order about any tax issue, including:
>
> (1) the valuation, assessment, or classification of property;
>
> (2) the imposition of a tax;
>
> (3) the determination of a claim for refund;
>
> (4) the application for an abatement, reduction, or revision of any assessment or tax; or
>
> (5) the application or an exemption from any assessment or tax.

Md. Code, Tax-General Article, §3-103(a). The Tax Court is authorized by statute to decide questions of law which affect appeals:

> (a) A party may submit to the Tax Court a request for a ruling on a question of law that is material to the appeal.
>
> (b) On a request submitted under subsection (a) of this section, the Tax Court may:
>
> (1) issue a ruling on the question of law;
>
> (2) modify the question submitted by a party and issue a ruling on the modified question; or
>
> (3) decline to issue a ruling.

Tax-General Art., §13-525. Thus, the Tax Court is fully authorized to decide questions of law, contrary to the Petitioner's arguments.

The statutory scheme also provides for judicial review in Tax-General Art., §13-532(a), which states:

> (a) (1) A final order of the Tax Court is subject to judicial review as provided for contested cases in §§10-222 and 10-223 of the State Government Article.
>
> (2) Any party to the Tax Court proceeding, including a governmental unit, may appeal a final order of the Tax Court to the circuit court.

In addition, T-P Art., §14-513 states, "Any party to a Maryland Tax Court proceeding may appeal a final decision of the Maryland Tax Court to the circuit court for the county in which the property is located." And T-P Art., §14-515 provides for an appeal from "a final decision of the circuit court to the Court of Special Appeals." Thus, by statute Maryland provides that a person aggrieved by an assessment, a levying of a tax or any other tax decision

may appeal to the Department of Assessments and Taxation, then to the Maryland Tax Court, then to the Circuit Court for the county in which the property is, then to the Court of Special Appeals of Maryland. After that, further review could be available by writ of certiorari issued by the Court of Appeals of Maryland. The appeal process is quite comprehensive, with two levels of judicial review. Certainly, it cannot be said that the State has not provided due process for persons who wish to dispute property tax decisions.

The Petitioner did not avail himself of any of his available remedies and he subsequently received bills from the City for personal property tax, which he did not pay. The bills were based on the assessments made by the State. The City brought suit to collect the moneys owed, pursuant to T-P Art., §14-866. That action in the District Court of Maryland was governed by T-P Art., §14-869, which states:

> (a) *Time of trial.* – If the plaintiff in an action under §14-866 of this subtitle requests, the case shall be brought to trial as soon as the case is at issue, and shall have precedence over all other civil cases.
>
> (b) *Certificate of collector is prima facie evidence.* – (1) in an action under §14-866 the certificate of the Comptroller or of the collector of any county or municipal corporation showing the amount of tax due with all penalties and interest:
>
> > (i) is prima facie evidence to entitle the plaintiff to judgment for the amount of the tax, penalty, and interest; and

> (ii) shall give the defendant the burden or proving that the tax has been paid or any other sufficient defense.
>
> (2) This section does not permit the defendant to use a defense that the defendant might have raised by way of appeal from the assessment on which the tax was imposed.

Section 14-869(b)(2) makes it quite clear that the statutory methods for appealing or challenging tax decisions are intended to be the exclusive way to challenge the propriety or validity of a tax decision. The suit to collect unpaid tax is intended solely to deal with questions relating to the amount claimed and whether it was paid or otherwise discharged.

In the present case, the District Court judge properly followed T-P Art., §14-869 and ruled that she lacked jurisdiction to rule on those defenses which should have been raised in the statutory appeal process described above. Likewise, the Circuit Court was correct in affirming the trial court's judgment. The District Court clearly had jurisdiction to rule on the merits of the collection case and the City presented a *prima facie* case by introducing the certificate of the collector. T-P Art., §14-869(b), *supra*.

While complex on its surface, this case is really quite simple. The Petitioner disagreed with the propriety of his property's being assessed and taxed. He failed to avail himself of the procedures established by the State for a person to challenge a tax decision. He now complains that he was denied due process, but the administrative and judicial forums for pursuing his arguments were clearly available to him. In essence, the Petitioner denied

himself due process by ignoring the prescribed methods for pursuing his challenges.

Accordingly, the Petitioner has not raised any important, unsettled question which warrants review by this Court. The case was decided properly below and it does not merit the attention of this Court.

CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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